IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA	. CASE NO. 5:16-CR-4-1BO
	. ELIZABETH CITY, NC
V.	. APRIL 27, 2016
	.
HEMZA LEFSIH	.
. . . .	.

TRANSCRIPT OF RULE 29 MOTION
BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE UNITED STATES: ERIC GOULIAN, ESQUIRE
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COURT REPORTER: MS. SANDRA A. GRAHAM, CVR

Proceedings recorded by stenomask, transcript produced from dictation.

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RULE 29 MOTION

THE COURT: All right. The jury is out of the courtroom. Do you have a motion you want to make?

MS. ARANEDA: Yes, I do, Your Honor. I have a Motion for Judgment of Acquittal, and bear with me, Your Honor. My client has been indicted on two counts under 18 U.S.C. 1015(a), one is for having signed the N-400 and mailed it in. And then the other offense relates to the actual interview. Concerning that, the elements are that he made a false statement under oath, acted knowingly and it was made on an immigration application. The government has not been able to establish that he made the statement under oath. Neither have they been able to establish that he made it knowingly. So I ask for those counts to be dismissed.

And concerning 18 U.S.C. 1546(a), the elements are that my client made a false statement under oath, acted knowingly, the statement was material, and it was made on the N-400. And his acts are by signing and sending in the N-400 and then statements made at the N-400 interview. Once again, they have not established that when he signed and mailed in his N-400 it was done under oath. Neither have they been able to provoke elements to show that he acted knowingly. So I ask for a judgment of acquittal on all four counts, Your Honor.

MR. GOULIAN: Your Honor, as to the under oath issue, I would refer the Court to United States v. Mensah, 737 F.3d 789. It's a 2013 case from the First Circuit where this precise issue was addressed. And the First Circuit held that while it was reviewing the District Court's jury instruction, which stated that the statement is made under -- in connection with the same statute, 1015, the jury instruction said statements made under oath, the defendant took an oath to testify truly before an agency authorized by law to administer oaths, or if the defendant, under penalty of perjury, subscribed as true written information submitted to the agency. And the First Circuit held that that was a proper instruction based on 28 U.S.C. 1746, which makes a statement under penalty of perjury the equivalent of an oath.

THE COURT: I'm not going to dismiss it at this time, but I'll take it under advisement.

MS. ARANEDA: All right. Thank you, Your Honor.

THE COURT: The case will be with you when we come back. Are you going to call any witnesses?

MS. ARANEDA: Yes. I'm going to call my client.

THE COURT: Okay. We'll be in recess until five minutes to two.

MS. ARANEDA: Thank you, Your Honor.

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RULE 29 MOTION AFTER ALL EVIDENCE

Do you want to renew your motion?

MS. ARANEDA: I do, Your Honor. I wish to renew my Motion for Judgment of Acquittal based on the previous arguments concerning that the government for all four counts has failed to show that my client acted knowingly on all four counts, and they also failed to show that he signed his application, N-400, under oath, under both 1015(a) and 1546(a).

THE COURT: All right. I'll deny that.

STATE OF NORTH CAROLINA)
) C-E-R-T-I-F-I-C-A-T-I-O-N
COUNTY OF PERQUIMANS)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Sandra A. Graham, CVRM *5/13/16*

Sandra A. Graham, CVR-M MAY 13, 2016
Court Reporter & Notary Public
Notary Public Number: 19940140086